

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO: "Case Track Seven") Polster

12 FRIDAY, JANUARY 6, 2023

13 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
14 CONFIDENTIALITY REVIEW

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16 Remote oral deposition of John
17 Schneider, Ph.D., held at the location of the
18 witness in Coral Gables, Florida, commencing
19 at 9:27 a.m. Eastern Time, on the above date,
20 before Carrie A. Campbell, Registered
21 Diplomate Reporter, Certified Realtime
22 Reporter, Illinois, California & Texas
23 Certified Shorthand Reporter, Missouri,
24 Kansas, Louisiana & New Jersey Certified
25 Court Reporter.

26 - - -

27 GOLKOW LITIGATION SERVICES
28 877.370.DEPS
29 deps@golkow.com

1 A. Yes.

2 Q. Okay. And we can put that away
3 now.

4 What did you do to prepare for
5 this deposition today?

6 A. I met with Mr. Boone and
7 Mr. O'Saile.

8 Q. Was there anybody else present?

9 A. Yes. Ms. Kara Kapke. Am I
10 pronouncing her last name right? If anyone
11 knows. I'm not sure how -- if I'm
12 pronouncing her last name correctly, but she
13 represents Publix.

14 Q. Okay. She represents Publix.
15 And is Publix also a client of
16 yours?

17 A. Yes.

18 So just to clarify, when you
19 asked me before who my client is in the Mo
20 Co. matter, it is Kroger. However, I have
21 continued to do work for other retail
22 pharmacies as well, including Publix.

23 Q. Okay. And is the work for the
24 other retail pharmacies for other opioid
25 cases in the MDL?

1 A. Well, I would say more
2 generally it is in anticipation of me
3 possibly being used in future matters, hence
4 their continued involvement.

5 Q. Okay. I just wanted to make
6 sure I understand.

7 So as you sit here today, are
8 you retained in any of what we call the
9 Tracks 8 through 11 cases?

10 A. Well, what I meant to say is I
11 don't know whether I am or not or whether I
12 will be or not.

13 Q. Okay. And how long was that
14 meeting?

15 A. I think probably roughly five
16 hours.

17 Q. And when was that?

18 A. That was yesterday.

19 Q. And did you look at any
20 documents?

21 A. I looked at my report. No.

22 Q. And, Dr. Schneider, how did you
23 come to be a testifying expert?

24 A. That's a good question. I
25 think probably -- you'll have to -- you mean

1 originally for the first -- starting with the
2 first time that I became a testifying expert?

3 Q. Right.

4 A. Okay. I was a -- on the
5 faculty at the University of Iowa in Iowa
6 City, Iowa, and I was contacted by an
7 attorney working in a trademark infringement
8 case, and they needed some -- they needed an
9 economist to opine or to analyze and opine on
10 market boundaries for hospitals in their
11 system versus the system -- or the opposing
12 system with whom they had a dispute.

13 Q. How did you come to be an
14 expert witness for Kroger?

15 A. For Kroger I have -- that sort
16 of kickoff expert testimony story I just gave
17 you. In the years since then, I continued to
18 add more types of cases to the -- to the work
19 that I did, mainly while I was still in
20 academia.

21 And then I went into
22 consulting, primarily consulting, sort of
23 continued doing litigation work, and
24 somewhere along the way I met Mr. Boone in
25 that work. And we worked on one case, and

1 then he contacted -- years had gone by and
2 then he contacted me again regarding the
3 opioid matter.

4 Q. Okay. And when did he contact
5 you about being an expert in the opioid
6 matter?

7 A. I don't remember the exact
8 date, but would have been in -- sometime in,
9 I want to say, maybe early 2021.

10 Q. Okay. And I guess really where
11 I want to go here, is when were you
12 approached about being an expert witness in
13 this case?

14 A. Okay. Again, sorry just to
15 clarify, you mean the --

16 Q. Track 7?

17 A. Montgomery County, Track 7
18 matter.

19 Q. Yes. I realize I shouldn't
20 have interrupted you, but, yes.

21 A. Let me think. I would say
22 probably, I want to say, maybe the middle
23 of last year. So mid-2022.

24 Q. Okay. And when you were
25 approached in the Montgomery County case,

1 Montgomery County, but I'm not 100 percent
2 sure.

3 Q. Okay. You say you were given
4 some claims. Can you explain to me what you
5 mean by that?

6 A. Unfortunately, I don't have
7 much more detail than that. I recall looking
8 at it, and they appeared to be records of
9 prescriptions that were filled at Kroger
10 stores, and it was a large sample. I don't
11 remember how many records were in the sample,
12 but we were provided the sample and we were
13 asked to -- we were provided a seed number
14 and we were asked to draw a random sample
15 from that.

16 Q. Okay. I think I understand.
17 Was this dispensing data from
18 Kroger?

19 A. Yes, that's correct.

20 (Schneider Exhibit 3 marked for
21 identification.)

22 QUESTIONS BY MS. SALTZBURG:

23 Q. Okay. We can put this away. I
24 would like to talk about the materials that
25 you reviewed for this case.

1 And to do that, let's take a
2 look at your report. It should be -- if you
3 can pull out Exhibit 3, please. And we can
4 mark that while you're doing that.

5 A. Okay.

6 Q. And just for the record, can
7 you identify this document?

8 A. Just going to quickly review
9 it.

10 Q. Take all the time that you
11 need.

12 A. Yes, this appears to be my
13 report for Montgomery County.

14 Q. Okay. And your counsel have
15 confirmed that the materials cited in this
16 report constitute all of the materials that
17 you considered in forming your opinions in
18 this case, correct?

19 A. Correct.

20 Q. I guess a better way to ask
21 that, is that correct?

22 A. That is correct.

23 Q. All right. And how did you
24 select those materials?

25 A. Well, in the course of doing --

1 researching the objectives that I was
2 addressing in this report, I conducted a
3 variety of literature searches primarily in
4 an online tool called PubMed which indexes
5 medical literature. And I also consulted
6 with economics materials from JSTOR, which is
7 an economics indexing source. I had also
8 consulted published materials in the form of
9 books that -- that are publicly available,
10 published books, you know, hardcover books,
11 most of which I have on my shelf. Some of
12 which were ordered specifically for this
13 matter.

14 Q. And how did you select the
15 materials that you reviewed?

16 A. Well, as an economist and a
17 health economist, I know the landscape of
18 source material, and the selection of
19 materials is based on a review of everything
20 that addresses the question that I'm asking,
21 and then a further assessment of the quality
22 of that material.

23 Q. And were any of the materials
24 provided by counsel?

25 A. No.

1 Q. And did you do any independent
2 outside research apart from the materials
3 that are cited here?

4 A. Can you just explain a little
5 more what you mean by that?

6 Q. Sure.

7 Other than what you just
8 described, did you do any independent outside
9 research?

10 A. No.

11 Q. And did you base your opinions
12 on any sources other than those listed in
13 your report?

14 A. No.

15 Q. Is there anything you felt like
16 you needed to look at and you did not have
17 the opportunity to do that?

18 A. No, not for the most part.

19 Q. What do you mean "for the most
20 part"?

21 A. I mean, as an academic
22 economist, I think we are kind of wired to --
23 always wanting to do more. It's just our
24 nature being an academic researcher, and so
25 that's why I say that, that added clause.

1 Q. Okay. And do you have a sense
2 of how many hours you plan to spend working
3 on the Track 7 case in the future?

4 A. No.

5 Q. Are you planning to be at the
6 trial?

7 A. As far as I know, yes.

8 Q. And is there anything further
9 you plan to do for Track 7 between now and
10 the trial?

11 A. Can you tell me when the trial
12 is scheduled for? Because I'm not sure how
13 to answer that question.

14 Q. There's not any.

15 A. Well, then I may be asked to do
16 additional work, but I have not been yet.

17 Q. Is there anything more you need
18 to give your opinions in this case?

19 A. Again, you're talking about
20 regarding the liability phase for Montgomery
21 County?

22 Q. Uh-huh.

23 A. No.

24 Q. Okay. And how certain are you
25 of the opinions offered in this case?

1 MR. BOONE: I'm sorry, what was
2 that?

3 QUESTIONS BY MS. SALTZBURG:

4 Q. How certain are you of the
5 opinions offered in this case?

6 A. Very certain.

7 Q. And do you have a file for the
8 materials in this case?

9 A. Yes.

10 Q. And can you describe that?

11 A. The file contains the --
12 primarily the PDFs of the cited materials.

13 Q. You have a part 7 of your
14 report here, which we'll get to later. You
15 referenced a regression that you did,
16 correct?

17 A. Correct.

18 Q. So I'm not an economist, but I
19 assume you don't do the regression in your
20 head, right?

21 A. Correct.

22 Q. There's got to be some kind of
23 documentation or something like that that
24 comes out of those?

25 A. There are regression results.

1 Q. And do you have those results?

2 A. I do. Not handy, but I do.

3 They exist, yes.

4 MS. SALTZBURG: And we would
5 request that those be provided.

6 MR. BOONE: Counsel, I note
7 your request. Thank you.

8 QUESTIONS BY MS. SALTZBURG:

9 Q. And just since we don't have
10 them right now, can you -- well, let's wait
11 on that.

12 But do you know, in what do you
13 have, do you have the coefficient estimates
14 that you used?

15 A. You mean the resulting
16 coefficient estimates?

17 Q. Yes.

18 A. I do not have them in front of
19 me, no.

20 Q. Do you have them in your file?

21 A. They're in my file, yes.

22 Q. And do you have backup analysis
23 in the file?

24 A. I'm sorry, can you repeat that?

25 Q. Do you have backup analysis in

1 the file?

2 A. Oh, what do you mean by backup
3 analysis?

4 Q. So any sort of backup analysis
5 that you did for the regression that you
6 reference.

7 A. I would say no. Just partly
8 because I'm not sure exactly what that would
9 constitute.

10 I -- in my file there is a page
11 of regression output regarding the rerunning
12 of Dr. Cutler's regressions, controlling for
13 endogeneity. So there's two sets of
14 regression results. I believe that is all
15 that is -- that is all that exists.

16 Q. Okay. So you have two sets of
17 results.

18 Did you do any regression that
19 you didn't include in the report?

20 A. No.

21 Q. Okay. And go to paragraph 1.2
22 of the report.

23 A. Okay.

24 Q. You mentioned here that you
25 don't necessarily agree with all the

1 findings, methods or summary opinions in the
2 materials that you cite, correct?

3 A. Correct.

4 Q. Okay. And how did you decide
5 which parts of the materials you would rely
6 on?

7 A. Well, the reason I included
8 that statement was because some of the
9 materials are relied on, certainly not all of
10 them. Some of them included data analysis,
11 but some of them also include opinions,
12 either in the introductions or in the
13 discussion sections.

14 And I just wanted to be careful
15 to make it clear that in citing a document --
16 and as you know from my report, I cite a lot
17 of documents. But in citing a document, I
18 didn't want to imply that I agreed with
19 everything in that citation.

20 Q. And is there a way to tell from
21 the report which part you do agree with?

22 A. Well, yes, indirectly, one
23 could look to see what I'm -- you know, for
24 example, if I'm citing a number from a
25 published study, then it is the reporting of

1 that number in the study that I'm interested
2 in, not necessarily the author's opinions
3 about opioids either, which, again, usually
4 appear in the introduction or the discussion,
5 sometimes in the conclusion section of those
6 articles.

7 Q. Okay. So is it fair to say
8 that if you're citing a document, you should
9 understand that -- you're relying on it for
10 the specific thing you're citing it for, not
11 for anything else?

12 A. Exactly.

13 Q. Okay. And was there any
14 materials or categories of materials that you
15 can think of that you did agree with
16 everything?

17 A. Probably not. I don't recall
18 off the top of my head, but I -- it's -- just
19 generally in my experience in being an
20 academic economist and health economist, I
21 don't -- it's rare that I agree with
22 everything in a particular article.
23 Sometimes, but it's rare.

24 Q. And apart from the sources that
25 we discussed a little bit earlier, what

1 documents or materials did you have access to
2 in preparing your report?

3 A. Those -- the materials we
4 discussed. Also the reports by Dr. Cutler
5 and Dr. Alexander, and the deposition
6 transcripts for both of those experts as
7 well.

8 Q. And did you review any of the
9 deposition testimony other than those two
10 transcripts?

11 A. I don't think so.

12 Q. Would you have cited it if you
13 did?

14 A. Well, not necessarily, because
15 I'm not sure that I cite the Cutler or
16 Alexander deposition transcripts. I may
17 have. I don't recall whether I did or not.

18 Q. Do you know if you reviewed any
19 testimony from witnesses in Montgomery
20 County?

21 A. From other witnesses other than
22 Cutler and Alexander, is that what you're
23 asking?

24 Q. Correct.

25 A. I'm quite sure that I did not.

1 Q. Okay. And did you review any
2 documents produced by any party in the
3 Montgomery County case?

4 A. Documents -- I'm sorry, could
5 you just explain what you -- maybe give me an
6 example.

7 Q. Yes.

8 So in litigation the parties
9 exchange documents. Did you review any of
10 those documents?

11 A. I don't think so.

12 Q. Maybe a way to explain is this,
13 when a document is produced in the case it
14 will have what we call a Bate stamp in the
15 bottom right-hand corner, letters and a
16 number.

17 Were any of the documents you
18 reviewed stamped like that?

19 A. No.

20 Thank you for that
21 clarification.

22 Q. All right. And did you review
23 any data produced in the Montgomery County
24 case?

25 A. Well, so if we could go back to

1 the sampling issue we were discussing before,
2 would that count as data produced in the
3 Montgomery County case?

4 Q. It would.

5 A. It would. Well, then, yes.

6 Q. Okay. And did you review
7 that -- just for that -- for the sampling --
8 drawing the sample that we talked about
9 earlier or for purposes of this report?

10 A. Just for the sampling.

11 Q. Okay. Any other data?

12 A. For this report, no.

13 Q. Okay. And have you reviewed
14 the complaint in this case?

15 A. No.

16 Q. And just for clarity, did you
17 review the reports of any experts in this
18 case, other than Dr. Alexander and
19 Dr. Cutler?

20 A. No.

21 Q. And for both of those experts,
22 did you review all of the appendices and
23 exhibits to those reports?

24 A. Yes.

25 Q. And did you select those

1 reports to review or were they provided by
2 counsel?

3 A. They were provided by counsel.

4 Q. And how would you receive those
5 reports? Electronic or copy?

6 A. Electronic.

7 Q. Do you know Dr. Cutler either
8 personally or by reputation?

9 A. By reputation, yes.

10 Q. Okay. And how is that?

11 A. How do I know? I work -- used
12 to work at a company called -- research
13 company called the Center for Health
14 Economics Research. It was located in
15 Boston. Dr. Cutler had just joined, I
16 believe, the Harvard faculty then. He could
17 have been somewhere else in Boston, but he
18 was in Boston. And I would see him at
19 lectures and symposiums and things like that.

20 Q. And what about Dr. Alexander?

21 A. Dr. Alexander, I'm less
22 familiar with. I know his name, but I'm not
23 familiar with his work, nor have I ever met
24 him or seen him present or anything.

25 Q. Okay. And when you say you

1 know his name, can you explain what you mean
2 by that?

3 A. Well, in my field of health
4 economics, we read a lot of materials. I've
5 had employees leave and go to Johns Hopkins,
6 enroll in programs and we have -- we
7 interview doctoral students for potential
8 positions at our company. Some of them come
9 from Johns Hopkins and -- yeah. So we just
10 see -- there's a lot of exposure when you're
11 in the academic field that's as sort of --
12 health economics is not a huge field. It's a
13 subfield within economics. So everyone tends
14 to -- there's quite a bit of name
15 recognition, especially among the
16 academic-based -- well, Alexander is not a
17 health economist, but he's one that opines
18 on -- or writes on matters of health policy,
19 quite a bit, in epidemiology and things like
20 that, and we in health economics overlap
21 quite a bit with those types of studies.

22 Q. Okay. And other than the --
23 well, actually, strike that. Let me ask you.

24 Did you ever have any
25 discussion with experts for other defendants

1 in this case, apart from the pharmacies that
2 were retained -- I guess let me ask it this
3 way.

4 Do you know who the other
5 experts retained by Kroger for Track 7 are?

6 A. I -- no, not -- not -- many of
7 them I don't know. I believe, I'm not
8 certain, that they have retained someone I
9 know to help with determining market size,
10 but as far as I know that wasn't an issue --
11 obviously not an issue in this matter and not
12 anything I relied on in this report.

13 Q. So I'm guessing you did not
14 have any discussion with those experts then?

15 A. Correct.

16 Q. Okay. And have you -- so for
17 the Track 7, have you had any calls or
18 meetings with lawyers representing anyone
19 other than Kroger?

20 A. Yes.

21 Q. And who is that?

22 A. Well, the attorneys
23 representing -- if you recall from the
24 invoicing documents, the other pharmacy --
25 the other pharmacies whom I've been -- who

1 have retained me, that would be Albertsons,
2 Meijer and Publix, have been occasionally
3 involved in calls over the -- over that time
4 period.

5 Q. Okay. Anyone other than those
6 pharmacies?

7 A. No.

8 Q. And have you discussed your
9 testimony in this case with anyone other than
10 Kroger and its counsel and counsel for Publix
11 at the one meeting?

12 A. Yes. There were some earlier
13 phone calls in which some of the counsel for
14 some of the other pharmacies were present.

15 Q. Okay. And that's the same
16 calls that you were just talking about?

17 A. Well, just for clarity,
18 distinguish -- distinguish those calls from
19 yesterday's prep calls, is that what you
20 mean?

21 Q. Yes.

22 A. Okay. That's correct, yes.

23 Q. Okay. But nothing other than
24 that?

25 A. No.

1 deposition or in the report here?

2 A. Well, I believe this
3 description in 2.8 is, again, without having
4 both reports in front of me, I can't say for
5 sure, but I believe this description is
6 somewhat different.

7 Q. Okay.

8 A. And there might be some
9 additional evidence cited.

10 Q. And in that case let me ask
11 you, how -- what is your opinion as to how
12 the FDA is a factor?

13 A. Well, the FDA is something as
14 an a health economist I'm quite familiar
15 with.

16 As I indicated earlier today,
17 we do work for life sciences companies,
18 device companies, diagnostic companies, and a
19 lot of those -- obviously a lot of those
20 companies have to interact with the FDA.

21 So I'm familiar with the rigor
22 of the FDA approval process. And when the
23 FDA approves a prescription drug, it is only
24 after a fair amount of research and
25 development on the part of the manufacturer

1 combined with assessment -- about a year-long
2 assessment by the FDA itself. So when the
3 FDA approves a prescription drug, the -- for
4 better or for worse, the community accepts
5 that drug. In other words, it's a stamp of
6 approval.

7 So FDA approval, if it's not --
8 if the FDA misses something, the implications
9 of that can be serious because they've given
10 a drug a stamp of approval and all of the
11 rest of the health care supply chain refers
12 to or defers to that approval.

13 Q. And so are you opining that the
14 FDA should not have approved opioids here?

15 A. No, I wouldn't say that. And
16 the reason for that is twofold. One is it's
17 true that 96 percent, approximately, of
18 opioids are used as directed. Opioids have
19 demonstrated clinical need. There's a large
20 literature on that. So I wouldn't say that
21 they -- that they shouldn't have approved it.

22 My opinion about the FDA is
23 that they should have done a better job doing
24 postmarket surveillance of adverse events
25 associated with the utilization of

1 prescription opioids.

2 Q. And is -- okay. But you're not
3 opining taking some opioids off the market
4 based on that surveillance, correct?

5 A. Well, okay. So that introduces
6 another layer. So when you say "some
7 opioids," so I think there were some products
8 that were particularly -- or had high risks
9 associated with them and higher rates of
10 adverse events associated with them. So in
11 those cases they might have considered that.
12 However, I'm not -- that's beyond my area of
13 expertise.

14 Q. Okay. What are you opining the
15 FDA should have done based on that postmarket
16 surveillance?

17 A. Well, I think they should have
18 done a better job of postmarket surveillance
19 in terms of adverse events. They were in a
20 position given the way that information is in
21 the postmarket phase is filed with the FDA or
22 expected to be filed with the FDA.
23 Physicians are supposed to -- it's very easy
24 for a physician to notify the FDA of things
25 that they observe. I don't know the extent

1 What materials did you rely on
2 as the basis for your conclusion that
3 pharmacies have done their part?

4 A. Again, this is just a general
5 comment that all entities have done their
6 part. And again, in the context of this --
7 in the context of this discussion, it's -- it
8 specifically having to do with this idea that
9 if -- as the supply of prescription opioids
10 has decreased, the supply of illicit opioids
11 has increased, and so that's an important
12 distinction to make in terms of that shifting
13 of sources of supply.

14 Q. Okay. Are there any specific
15 sources that you're relying upon for opining
16 that pharmacies have done their part?

17 A. No specific sources identified
18 here.

19 MS. SALTZBURG: Okay. Let's go
20 on a break.

21 (Off the record at 3:33 p.m.)

22 QUESTIONS BY MS. SALTZBURG:

23 Q. So, Dr. Schneider, I would like
24 to go to Section 6 of the report on
25 implications. It starts on page 31.

1 A. Okay.

2 Q. Okay. And so you're opining
3 here that there are implications for opioid
4 litigation generally and Montgomery County
5 specifically, correct?

6 A. Correct.

7 Q. And are those implications
8 different in any way?

9 A. Do you mean between Montgomery
10 County and the general?

11 Q. Yes.

12 A. A little bit different.
13 There's some aspects of Montgomery County
14 that I highlight in this -- in this section
15 that not necessarily apply to other
16 jurisdictions.

17 Q. Let's go through those then.
18 I guess before I do that, same
19 page, paragraph 6.2. You say, "The State of
20 Ohio and Montgomery County are subject to all
21 factors that affect the entire country."

22 Correct?

23 A. Correct.

24 Q. And what do you mean there?

25 A. Well, in other words, a lot of

1 the intervening factors I identified are
2 national factors of FDA, CDC, DEA, factors
3 that don't distinguish or do things
4 differently by county or by state. That's
5 what I mean by that.

6 Q. Okay. So as part of the
7 nation, Montgomery County would be subject to
8 all of the national factors?

9 A. Correct.

10 Q. And that's the seven factors
11 that we've talked about in part 2, correct?

12 A. Correct.

13 Q. So based on that, would you not
14 expect to see significant variation in
15 shipments to Montgomery County and other
16 parts of the country?

17 A. Well, we might. So, for
18 example, the discussion about medical need
19 and the different health care indicators in
20 Montgomery County might suggest a greater
21 medical need in Montgomery County. It's a
22 point I've made in a couple of different
23 places here today. So that's one aspect.

24 Q. Okay. Let's talk about medical
25 need.